



PUBLIC NOTICE

Federal Communications Commission
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CONSUMER & GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON CLUB TEXTING'S PETITION FOR DECLARATORY RULING CONCERNING THE TELEPHONE CONSUMER PROTECTION ACT (TCPA) RULES

CG Docket No. 02-278

Comments Due: November 30, 2009

Reply Comments Due: December 7, 2009

On August 25, 2009, Club Texting, Inc. (Club Texting) filed a petition requesting a declaratory ruling¹ regarding the Commission's rules under the Telephone Consumer Protection Act (TCPA).² Specifically, Club Texting asks the Commission to clarify that, consistent with the treatment of fax broadcasters, text broadcasters are not senders of text messages under section 227(b)(1) of the TCPA.³ Notably, Section 64.1200(a)(1)(iii) of the Commission's rules prohibits the initiation of "any telephone call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice, to any telephone number assigned to . . . cellular telephone service . . ."⁴ The Commission concluded that this prohibition applies to both voice calls and text calls to wireless numbers, provided the call is made to a telephone number assigned to such wireless service.⁵ In addition, section 64.1200(a)(3) of the Commission's rules prohibits the use of any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.⁶ The rules further provide that a facsimile broadcaster will be liable for violations of the rules if it demonstrates a high degree of involvement in, or actual notice

¹ See Petition for Declaratory Ruling, filed by Club Texting, Inc., August 25, 2009 (*Petition*).

² Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227. The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. § 201 *et seq.*

³ *Petition* at 1. Section 227(b)(1) of the TCPA is incorporated in the Commission's rules at 47 C.F.R. § 64.1200(a)(1).

⁴ 47 C.F.R. § 64.1200(a)(1)(iii).

⁵ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14115, para. 165 (2003).

⁶ 47 C.F.R. § 64.1200(a)(3). An unsolicited advertisement is defined as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission, in writing or otherwise." 47 C.F.R. § 64.1200(f)(13).

of, the unlawful activity and fails to take steps to prevent such facsimile transmissions.⁷ Section 64.1200(f)(6) states that a facsimile broadcaster is a person or entity that transmits messages to telephone facsimile machines on behalf of another person or entity for a fee.⁸

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on Club Texting's petition on or before **November 30, 2009** and reply comments may be filed on or before **December 7, 2009**. When filing comments, please reference **CG Docket No. 02-278**. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal Rulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments. If multiple docket or rulemaking numbers appear in the caption of this proceeding, commenters must transmit one electronic copy of the comment to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. Commercial and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.

Parties who choose to file by paper should also submit their comments on CD-Rom. The CD-Rom should be submitted, along with three paper copies, to: Kelli Farmer, Consumer & Governmental Affairs Bureau, Policy Division, 445 12th Street, SW, Room 5-A866, Washington, D.C. 20554. Such a submission should be on CD-Rom formatted in an IBM compatible format using Word 2003 or compatible software. The CD-Rom should be accompanied by a cover letter and should be submitted in "read only" mode. The CD-Rom should be clearly labeled with the commenter's name, proceeding (including the lead docket number) in this case, **CG Docket No. 02-278**, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the CD-Rom. The label should also include the following phrase "CD-Rom Copy - Not an Original." Each CD-Rom should

⁷ 47 C.F.R. §64.1200(a)(3)(vii).

⁸ 47 C.F.R. §64.1200(f)(6).

contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send CD-Rom copies to the Commission's copy contractor, Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554.

Pursuant to section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are subject to disclosure. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. *See* 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

The full text of this document and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, D.C. 20554. This document and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact the Commission's contractor at their web site www.bcpiweb.com, email at fcc@bcpiweb.com, or by calling 1-800-378-3160. A copy of the Petition for Waiver may also be found by searching ECFS at <http://www.fcc.gov/cgb/ecfs> (insert **CG Docket No. 02-278** into the proceeding block).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format) send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This *Public Notice* can also be downloaded in Word or Portable Document Format (PDF) at <http://www.fcc.gov/cgb/html>.

FOR FURTHER INFORMATION CONTACT: Karen Johnson, Consumer & Governmental Affairs Bureau, Federal Communications Commission, 202-418-7706 (voice), Karen.Johnson@fcc.gov.

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